

When are charges by caterers taxable?

Regulation 1603, *Taxable Sales of Food Products*, explains the application of tax to sales made by and to caterers. Amended in 2002, the regulation includes several changes regarding the application of tax to caterers' charges for serviceware and use of premises.

Definition of Caterer

For sales and use tax purposes, "caterer" is defined as a person engaged in the business of serving meals, food, or drinks on the premises of the customer, or on premises supplied by the customer, including premises leased by the customer from a person other than the caterer.

Sales to and by Caterers

Food and drinks – Your charges for preparing and serving meals, food, or drinks are taxable.

Serviceware, tables, and so forth – If you charge a lump-sum amount for meals that includes charges for the rental of dishes, silverware, glasses, chairs, tables and other tangible personal property used to serve food and beverages¹, your total lump-sum charge is taxable. In addition, you may not issue a resale certificate to purchase or rent such items because you are considered using them in connection with the sale of meals, rather than renting them to your customer.

However, if you make a *separate* charge for the rental of these items (dishes, tables, and so forth), the taxability of those charges depends on how you purchased or leased the property. In general, if you give your supplier a resale certificate and do not pay tax when you purchase or rent the property, your itemized charges to your customer are taxable. Since you separately itemize charges to your customer for the lease/rental of such property, you are considered leasing the property to your customer and you may properly issue a resale certificate when you purchase or lease the property.

If you do not issue a resale certificate and pay sales or use tax when you purchase or rent these items, tax does not apply to the subsequent rental to your customer.

Note: Occasionally, caterers will rent or lease from a third party items such as dishes, linen, silverware and glasses, and so forth, to rent to customers without furnishing or serving any meals, food, or drinks to the customer. In these situations, they are not acting as a caterer within the meaning of this regulation, but solely as a lessor of tangible personal property. Tax applies to such leases as explained in Regulation 1660, *Leases of Tangible Personal Property – In General*.

¹ "Other tangible personal property used to serve food and beverages" includes tents, canopies, subflooring, generators, air compressors, lighting, electrical fixtures, etc., which provide, or are integral to temporary shelter for the service of meals, food, or drinks.

Disposable serviceware: Charges by caterers for disposable serviceware – such as disposable plates, napkins, utensils, glasses, cups, stemware, place mats, trays, covers and toothpicks - are taxable. Regardless of whether your billings are itemized, disposable serviceware is considered sold with meals, food, or drinks and may be purchased with a resale certificate.

Items not normally used to furnish and serve food and beverages: Caterers may provide items not customarily used within the catering industry in connection with the furnishing and serving of food or drinks such as decorative props related solely to optional entertainment, special lighting for guest speakers, sound or video systems, dance floors, stages, etc. In general, if you pay sales or use tax on the purchase or rental of such items, tax does not apply to the rental to your customers. However, if you do not pay tax to your vendor when you purchase or rent the property, the rental charges to your customer are taxable.

Charges for Planning, Designing and Coordinating Events

Tax applies to your charges for event planning, design, coordination, and/or supervision if they are made in connection with the furnishing of meals, food, or drinks for the event. Tax does not apply to separately stated charges for services unrelated to the furnishing and serving of meals, food, or drinks, such as optional entertainment or any staff who do not directly participate in the preparation, furnishing, or serving of meals, food, or drinks (for example, coat-check clerks, parking attendants, security guards, and so forth).

Sales to event coordinators: Tax does not apply to your charges for preparing and serving food, meals, or drinks to event planners, party coordinators, or other retailers, who will sell those items and report tax on their sale. You should obtain a resale certificate from your customer and claim the sale as a nontaxable sale for resale. When event coordinators have their own contract with a customer to sell the meals, food, or drinks to the customer, the event coordinator is acting as a retailer, and is not merely acting on behalf of the caterer.

When caterers sell meals, food, or drinks and the serving of them to other persons who charge a fee for their service unrelated to the taxable sale, the separately stated fee is not subject to tax.

Premises Charges

A caterer's separately stated charges for the lease of premises on which meals, food, or drinks are served, are nontaxable leases of real property. When a charge for leased premises is a guarantee against a minimum purchase of meals, food, or drinks, your charge for the guarantee is part of gross receipts subject to tax. Where you are contracted to provide both premises and meals, food, or drinks, your charge for the meals, food, or drinks must be reasonable in order for the charge for the premises to be nontaxable.

Hotels and Restaurants

The application of tax to sales of meals by hotels and restaurants did not change with the 2002 amendments to Regulation 1603. Hotels and restaurants are considered the consumers of tangible personal property normally used in the furnishing and serving of meals, food, or drinks such as tables, chairs, glasses, silverware, dishes, linens, and so forth. They are also the consumers of additional tangible personal property which provide the customer with a temporary sheltered place for the service of meals, food, or drinks such as tents, canopies, subflooring, Astroturf,

generators, air compressors, lighting, heating, and electrical fixtures. Hotels and restaurants may not issue a resale certificate for their purchase or lease of such property. In addition, charges to customers for items used in connection with preparing and serving meals, food, and drinks are taxable.

Hotels and restaurants are, however, considered lessors of tangible personal property which is not used in connection with the furnishing or serving of meals, food, or drinks such as decorative props related solely to optional entertainment, special lighting for guest speakers, sound or video systems, dance floors, stages, etc. In such instance, tax applies to the lease in accordance with Regulation 1660.

Charges by hotels or restaurants for the lease of premises on which meals, food, or drinks are served, are generally included in the taxable gross receipts, whether or not the charge is separately stated. However, a hotel or restaurant may qualify as a caterer as defined under subdivision 1603(h)(1) if it serves meals, food, or drinks on premises supplied by its customer.

Retailers Other than Hotels, Restaurants, and Caterers

Retailers that are not restaurants or hotels or caterers as defined by Regulation 1603 may contract to provide both meals and premises for events. Generally, these retailers operate businesses where the facilities are used primarily (used most of the time) for purposes unrelated to the serving of meals, food and drinks. Examples include wineries, zoos, museums, and aquariums. When these retailers contract to provide both the meals and premises, the premises must be used primarily for purposes unrelated to the serving of meals, food and drinks in order for the separately stated premises charge to be nontaxable.

For example, a winery has a courtyard area designed for wedding receptions. In addition to charges for meals and drinks, the winery charges a fee for use of the courtyard. Since the courtyard is primarily related to the serving of meals, food, and drinks, the winery's fee for the use of the courtyard is taxable. However, if the bridal party rents the entire winery for the reception, separately stated charges for the winery are not subject to tax. Another example would be a Christmas party at an aquarium where there is a café. If the customer rents the café for the party, charges for the café are subject to tax because the café is primarily used for the serving of food and drinks. However, if the customer rents the entire aquarium for the party, tax would not apply to separately stated charges for use of the entire aquarium.

For More Information

To obtain a copy of Regulation 1603, *Taxable Sales of Food Products*, please visit our website at <http://www.boe.ca.gov/sutax/staxregs.htm>, or you may contact our Information Center at 800-400-7115 for assistance.

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